

Chapter 292: ENVIRONMENTAL LEAD INVESTIGATIONS

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**SUMMARY:** This chapter identifies properties that are subject to environmental lead investigations, states the responsibilities of licensed lead inspectors and risk assessors when conducting environmental lead investigations, and describes the information, including abatement orders, that shall be provided to owners and occupants as a result of these investigations.

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**1. Applicability**

This Rule applies to all residential dwellings and child-occupied facilities situate in the state of Maine, and the owners of such properties.

**2. Validity of Local Ordinances**

Nothing in these Rules shall be construed to prevent any municipality or political subdivision from enacting or enforcing an ordinance which establishes a system of lead poisoning control that provides the same or higher standards than those provided in this chapter.

**3. Definitions**

**A. Abatement.** "Abatement" means any measure or set of measures designed to permanently eliminate lead hazards. "Abatement" includes, but is not limited to:

- (1) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures and the removal or covering of lead-contaminated soil; and
- (2) All preparation, cleanup and post-abatement clearance testing activities associated with such measures.

"Abatement" does not include renovation and remodeling as defined in The Department of Environmental Protection, Lead Management Regulations, 06-096 CMR Ch. 424. For purposes of this definition, "permanently" means for at least 20 years.

**B. Child.** "Child" means a person or persons up to 6 years of age.

**C. Child-occupied facility.** "Child-occupied facility" means a building or portion of a building visited regularly by the same child, up to 6 years of age, on at least 2 different days within any week, provided that each day's visit lasts at least 3 hours, the combined weekly visit lasts at least 6 hours, and the combined annual visits last at least 60 hours.

- D. Department.** "Department" means the Department of Human Services.
- E. Environmental lead investigation.** "Environmental lead investigation" means a detailed and extensive investigation to determine the probable cause of a persistent elevated blood lead level or confirmed case of lead poisoning in a child.
- F. Lead-based paint.** "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or more than 0.5% by weight.
- G. Lead hazard.** "Lead hazard" means any condition that may cause exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated water or lead-based paint that is in poor condition as defined in the Department of Environmental Protection rules cited in section 3.A above.
- H. Lead inspector.** "Lead inspector" means a person licensed by the Maine Department of Environmental Protection to perform lead inspections.
- I. Lead poisoned or lead poisoning.** "Lead poisoned" or "lead poisoning" means a blood lead level, confirmed by a venous sample analysis, which is of 20 micrograms per deciliter ( $\mu\text{g/dl}$ ) or greater.
- J. Lead-safe.** "Lead-safe" means a residential dwelling unit or child-occupied facility that contains no lead hazards. Note: Please note that proper building maintenance must be performed in order to remain lead-safe. Buildings with chipping or flaking lead-based paint do not meet the criteria of lead-safe.
- K. Occupant.** "Occupant" means a person who either resides in or regularly uses a dwelling, child-occupied facility 6 or more hours per week.
- L. Owner.** "Owner" means any person who individually, jointly or in common with others:
- (1) is the chief executive officer of the municipality, school administrative unit or state agency that controls the use of publicly owned property;
  - (2) is the mortgagee who has taken actual possession in accordance with applicable law. A mortgagee who has not taken actual possession is not the owner; or
  - (3) is characterized by the following:
    - (a) has legal title to any residential dwelling unit;
    - (b) has charge, care or control of any premises as owner or agent of the owner and has authority to expend money for compliance with the state sanitary code or as an executor, an administrator, a trustee or a guardian of the estate or the holder of legal title;
    - (c) is a real estate property manager or other entity that has the authority to fund capital or major property rehabilitation on the owner's behalf;

- (d) is an estate or trust of which the premises is a part or the grantor or beneficiary of an estate or trust; or
  - (e) is the association of unit owners of a condominium or cooperative, which is considered as owner solely with respect to common areas and exterior surfaces and fixtures of that condominium or cooperative.
- M. Paint.** "Paint" means any substance applied to a surface as a coating, including, but not limited to, household paints, varnishes and stains.
- N. Persistent elevated blood lead level.** "Persistent elevated blood lead level" means a blood lead level of 15-19 µg/dl with two consecutive tests, at least 30 days apart, in a child up to 6 years of age.
- O. Person.** "Person" means any individual, firm, corporation, association, partnership, the state, or any political subdivision of the state.
- P. Premises.** "Premises" means a plotted lot or part of a plotted lot, an unplotted lot or parcel of land, including developed and undeveloped land and any structure that exists on the land, if children use the lot, parcel or structure.
- Q. Primary residence.** "Primary residence" means the residential dwelling in which the child resided at the time a persistent elevated blood lead level or a confirmed case of lead poisoning is identified.
- R. Residential dwelling.** "Residential dwelling" means a structure, including common areas and appurtenant structures such as porches and stoops, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons, including children's homes as defined in 22 M.R.S.A. section 8101.
- S. Secondary premises.** "Secondary premises" means any residential dwellings and/or child occupied facilities in which a child up to 6 years of age lives, visits, or is at 6 or more hours per week.
- T. Single-Family Residence.** "Single-family residence" means a residential dwelling consisting of only one dwelling unit.
- U. State lead investigator.** "State lead investigator" means a lead investigator who is currently licensed by the Department of Environmental Protection as a lead inspector or risk assessor, and is employed or authorized by the Department to conduct environmental lead investigations.

#### **4. Environmental Lead Investigations**

##### **A. General Provisions**

- (1) A residential dwelling shall be subject to an environmental lead investigation by a state lead investigator whenever any of the following circumstances exist:
  - (a) The primary residential dwelling or dwelling unit has a child with a persistent elevated blood lead level.
  - (b) The primary residential dwelling or dwelling unit has a child with a confirmed case of lead poisoning.
  - (c) There are reasonable grounds to suspect lead is either in or upon exposed surfaces in other premises. The term "other premises" includes, but not by way of limitation:
    - (i) Secondary premises when a child's blood lead level remains elevated and no other potential sources were identified in the child's primary residence, or the child visits such secondary premises for at least 6 hours per week.
    - (ii) New residences when a child moves to a new dwelling, and two consecutive blood lead level tests, at least 30 days apart, indicate a persistent elevated blood lead level or a confirmed lead poisoning, and/or medical and nursing reports indicate there may be lead hazards in the new residence.
    - (iii) Other residential dwelling units, when child occupants up to 6 years of age reside in the same building as the residential dwelling unit in which a persistent elevated blood lead level or a confirmed case of lead poisoning is identified.

##### **B. Residential Dwellings Subject to Environmental Lead Investigations.**

- (1) A primary residence in which a child up to 6 years of age resided at the time of the identification of his or her persistent elevated blood lead level or confirmed case of lead poisoning is subject to an environmental lead investigation.
- (2) A secondary residence is subject to an environmental lead investigation in the event no environmental lead hazard(s) has been identified in the primary residence and there are reasonable grounds to suspect the secondary residence may present an environmental lead hazard.
- (3) New residence. In the event a child with a persistent elevated blood lead level or confirmed lead poisoning moves to a new residential dwelling, such new premises may be subject to an environmental lead investigation under the following circumstances: If (1) a child has a confirmed persistent elevated blood lead level or confirmed lead poisoning, and/or (2) there are reasonable grounds to believe that the new residence poses a significant health risk to the child.

- (4) Other residential dwellings in multi-unit buildings. Whenever lead hazards are found in any residential dwelling within a multi-unit building, a State lead investigator shall conduct a visual inspection of all other units where children up to 6 years of age reside or attend a child-occupied facility. In the event there are reasonable grounds to suspect the dwelling unit presents an environmental lead hazard, the dwelling unit is subject to an environmental lead investigation within 30 days. In the event an environmental lead hazard is identified at such a dwelling unit, the Department may order such environmental lead hazard(s) to be abated immediately.
- (5) The Department shall have the discretion to conduct a full investigation at the primary residence of a child when two consecutive blood lead tests, at least 30 days apart, are persistent between 15-19 µg/dl.

**C. Scope of Environmental Investigations.** Any residence or child occupied facility of a child up to 6 years of age with a persistent elevated blood lead level or confirmed case of lead poisoning is subject to a full environmental lead investigation. The Department may gather relevant information pertaining to the environmental lead investigation including, but not by way of limitation:

- (1) Number of units in the building;
- (2) Number of units rented or leased to families with children up to 6 years of age;
- (3) A visual inspection of each dwelling unit in the building where children up to 6 years of age reside;
- (4) Age and history of the building, including any renovation in both residential dwelling units and common areas; and
- (5) The collection of samples of paint, soil, dust, or water as is appropriate.

***Additional units in the building may be fully inspected depending on the condition of painted surfaces and accessibility of potential sources of lead to children.***

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NOTE: Title 22 M.R.S.A. Chapter 252 §1320-A requires the Department to conduct an investigation of any residential dwelling, other than an owner-occupied single-family residence within 30 days, if (1) a case of lead poisoning or a persistent elevated blood lead level has been identified in any dwelling unit within the residential dwelling, or (2) lead based substances have been identified in any dwelling unit within the dwelling.

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**D. Notice of Environmental Lead Hazards**

- (1) Prior to leaving a rented or leased residential dwelling or child-occupied facility in which an environmental lead hazard has been identified, the state lead investigator shall post in a conspicuous place or places a "notice" of the existence of the environmental lead hazards. This notice may not be removed until the

Department demonstrates that the identified lead hazard(s) no longer exist. In multi-unit buildings, this posting shall be positioned in a common area for all building residents to view. This notice shall remain on the residential dwelling or premise until the Department removes it, or authorizes the owner to remove it.

- (2) Advisory to Owner and Occupant. In the case of a rental unit, "a residential lead-based paint advisory" shall also be mailed to the owner and the occupant, along with the inspection report. Other residents in a multifamily building will be mailed an advisory notice if requested. The advisory must contain the following information:
  - (a) Harmful effects of lead on children, pregnant women, and pets.
  - (b) Prohibition on abatement of lead hazards by other than licensed individuals.
  - (c) Summary of paint removal methods and precautions to be taken during removal.
  - (d) Prohibition of renting the residential dwelling(s) that has been posted and the abatement of lead hazards has been ordered.

#### **E. Report to Owner and Order to Abate**

- (1) Notice to Owner. The Department shall send a copy of the environmental lead investigation report to the owner of the residential dwelling premises, residential child-care facility or child-occupied facility. The report shall be sent by certified mail, return receipt requested.
- (2) Order to Abate. The Department shall order the owner to abate the environmental lead hazards identified in the environmental lead investigation report within thirty (30) days of receipt of notice.

If the lead-based hazards cannot be removed, replaced or securely and permanently covered within 30 days, the owner, or abatement contractor, may request an extension for a reasonable period of time.

The request must be made in writing to the Maine Childhood Lead Poisoning Prevention Program, and must state the work completed to date, the reason why the remaining work cannot be completed in 30 days, and an outline of an expected completion date. The Department may grant an extension to complete the abatement activity within a reasonable period of time.

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NOTE: In the event that the owner does not abate the residential dwelling or premises within the established time frame, or after a specified period of extension, the Director of the MCLPPP, or authorized representative, may refer the violation to the Office of the Attorney General for legal action.

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- (3) In the case of an owner-occupied, single family residence, the Department may, in its discretion, provide such technical assistance and guidance to the property owner as it determines appropriate to achieve a lead-safe environment in the residential dwelling unit. The Department may provide such technical assistance and guidance, in its discretion, either in lieu of, or in coordination with an enforcement action by the Department.
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NOTE: If the owner does not make sufficient progress within a reasonable time period to protect the lead-poisoned child, or other children, from further exposure, the Department may issue an Order to Abate and pursue with an enforcement action.

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**F. Violation**

In addition to any other penalties provided by Title 22 M.R.S.A., Ch. 252, any person who violates these rules is subject to a fine not to exceed \$500, or imprisonment not to exceed six months, or both, in accordance with the provisions of 22 M.R.S.A. §1325. Each violation of these rules shall be considered a separate violation.

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EFFECTIVE DATE:

November 24, 1993

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 5, 1996

AMENDED:

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